

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

APPLICATION FOR WAIVER

Docket No. RM2021-5

**JOINT OPPOSITION OF THE NATIONAL POSTAL POLICY COUNCIL,
THE MAJOR MAILERS ASSOCIATION,
THE NATIONAL ASSOCIATION OF PRESORT MAILERS, AND
THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT**
(April 6, 2021)

The National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement hereby oppose the Postal Service's application for waiver under 39 C.F.R. §3030.286.¹ The Postal Service seeks a waiver in order to avoid setting the workshare discount for Automation 5-Digit letters to a more economically efficient level as required by current rules. Setting the Automation 5-Digit discount at a more economically efficient level is long overdue.

In adopting the workshare discount rule, the Commission stated that waivers would be limited to exceptional circumstances and that waiver applications must strictly adhere to the requirements of rule 3030.286. The Postal Service's application falls far short of meeting that standard, and its waiver application must be denied.

¹ *United States Postal Service Application for Waiver Under 39 CFR 3030.286* (Mar. 26, 2021); *Notice and Order Concerning Postal Service Application for Waiver Under 39 CFR 3030.286*, Order No. 5854 (Mar. 30, 2021).

I. DISCUSSION

The Postal Service applies for a waiver of the applicability of rule 3030.284 to the First-Class Letters 5-Digit Automation discount to a market-dominant rate change it anticipates filing on or about May 28, 2021. That rule requires the Postal Service to set the passthrough of workshare discounts that are below avoided costs to at least 85 percent. Currently, the 5-Digit discount passes through only 73 percent of the costs avoided. The Postal Service seeks to preserve this inefficient price signal instead of increasing the discount as required by the Commission's rule.

The waiver application must be denied. Commission rule §3030.286, which governs applications for waiver of the workshare discount rules, requires that the Postal Service provide a "specific and detailed statement" that justifies its request under criteria set forth in rule §3030.286(c). That statement must give reasons, "including all relevant supporting analysis and all assumptions relied upon," why the waiver is requested. In adopting the rule, the Commission stated its intention that the waiver process should be used only "in exceptional circumstances" and that will hold the Postal Service to "strict adherence to the waiver regulation." Order No. 5763 at 213-214.

The sole support offered by the Postal Service for its request is a statement claiming that increasing the 5-Digit discount as required by the rules would "decrease the efficiency of its processing operations." *Statement in Support of Waiver Application* at 2. In waiver applications based on "efficiency of operations" assertions, rule 3030.286(c)(5) provides:

For a claim that setting an excessive or low workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service, the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(5)(i) through (iii) of this section:

- (i) A description of the operational strategy at issue.
- (ii) Quantitative analysis or, if not available, qualitative analysis indicating how the workshare discount at issue is related to that operational strategy.
- (iii) How setting the workshare discount in compliance with § 3030.283(c) or § 3030.284(c), whichever is applicable, would impede that operational strategy.

Nowhere does the *Statement* address any of these criteria. It does not identify the “operational strategy” of concern, much less discuss it, nor does it provide a scintilla of quantitative or qualitative analysis addressing how an increase in the size of the 5-Digit discount to a *more efficient* price would *decrease* the Postal Service’s operational efficiency or impede its operational strategy. Accordingly, the Commission should deny the request simply on the grounds that it does not even address the permissible grounds for waiver.

What rationale the Postal Service *does* offer—although irrelevant under the rule—also fails to support the waiver. The Postal Service says that increasing the discount to 3.5 cents—the minimum required by the Commission’s rules—would “represent a significant increase compared to prior years” and a “dramatic change following years of rate stability” and “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC.” *Statement* at 2. This does not come

close to satisfying the Service's burden.

For one thing, the Commission should remember that increasing the 5-Digit discount to a more efficient level would be a "significant increase" only because the Postal Service has consistently failed to price that discount efficiently in recent years. The purpose of rule 3030.284 is precisely to rectify that inefficient pricing. For another, the Commission's own rules already set a 20 percent increase as a floor for improving discounts set well below avoided costs. See 39 C.F.R. §3030.284(c), meaning that the Commission has already determined that pricing efficiency is more important than preserving past uneconomic price relationships.

The concern about "rate stability" cannot be taken seriously. It amounts to saying that rates should remain inefficient because they have been set inefficiently for years. Poor pricing decisions in the past cannot justify perpetuating poor pricing today. Mailers using the 5-Digit rate would have no objection to, and would feel no rate shock from, the long-sought larger discount required by the Commission's rule. Indeed, the larger discount has been predictable ever since the Postal Service submitted the costs avoided calculations in its Annual Compliance Report for Fiscal Year 2020.

The Postal Service's assertion that enforcing the rule 3030.284 "could lead to unpredictable changes" among the relative use of Automation rate categories similarly lacks merit. The Service offers no quantitative or qualitative support for that argument. Nor has it attempted to link such "unpredictable" changes to operational efficiency or any other relevant criterion. In any event,

First-Class Automation mailers are quite sophisticated and are capable of responding to economically efficiently set rate signals. If the mail mix shifts in response to more economic price signals, that should *increase*, not decrease, the Postal Service's operational efficiency. The Postal Service should welcome any volume consequences of more efficiently set discount prices.

Finally, the Commission should note that on March 24—only two days before filing this waiver request—the Postal Service filed a proposal to change the methodology for the First-Class Mail cost avoidance model. See *Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two)*, Docket No. 2021-4.² That proposal, if adopted unchanged, would reduce cost avoidance at the 5-Digit level and could allow the Service to retain a 3.0 cent discount without requesting a waiver.³ In Order No. 5763, the Commission denied a Postal Service proposal that would have allowed the Service to use *proposed* cost avoidance methodologies in setting rates. The Commission stated that “approval of new cost avoidance methodologies is necessary prior to implementation and adoption is not guaranteed.” Order No. 5763 at 222.

Thus, the Postal Service's waiver request in effect asks for *precisely* the relief that the Commission rejected in Order No. 5763. As the Commission said

² Curiously, the Postal Service's waiver request does not even mention the filing of that proposal.

³ In light of that, the Postal Service's promise that it would “implement the higher workshare discount requirement for 5-Digit” mail “a year later” (*Statement* at 1) cannot be credited.

at that time, “to delay the improvement of workshare discounts closer to [Efficient Component Pricing] for a significant amount of time for a proposal that may not be approved would be inappropriate and counterproductive to objectives underlying the worksharing regulations.” Order No. 5763 at 223.

The Commission adopted rule 3030.284 only last year, in recognition that more efficiently priced workshare discounts play an important role in cost reduction and efficient postal operations. It did so to overcome the Postal Service’s long-standing resistance to applying Efficient Component Pricing principles to workshare discounts. The Postal Service has advanced no valid reason for the Commission not to enforce rule 3030.284 as written now.

II. CONCLUSION

For the foregoing reasons, the Commission should deny the Postal Service's application for waiver.

Respectfully submitted,

Arthur B. Sackler
Executive Director
NATIONAL POSTAL POLICY COUNCIL
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(202) 508-3687

Todd Haycock
President
MAJOR MAILERS ASSOCIATION
5220 Robert J Mathews Parkway
Eldorado Hills CA 95762
631-708-4258

Steve Krejcik
President
ASSOCIATION FOR MAIL ELECTRONIC
ENHANCEMENT
1260 E 88th Street
Newaygo, MI 49337
(708) 485-4764

By: s/ William B. Baker
POTOMAC LAW GROUP, PLLC
1300 Pennsylvania Avenue,
N.W.
Suite 700
Washington, D.C. 20004
(571) 317-1922
wbaker@potomacclaw.com

Robert Galaher
Executive Director and CEO
NATIONAL ASSOCIATION OF
PRESORT MAILERS
PO Box 3552
Annapolis, MD 21403-3552
(877) 620-6276